

1 **TODD TRIERWEILER - OSB #85348**
Todd Trierweiler & Associates
2 Attorneys at Law
4721 N.E. 102nd Avenue
3 Portland, Oregon 97220
Phone: 503/253-7777
4 Fax: 503/253-2959

5 Attorney for Debtor

6
7

8 IN THE UNITED STATES BANKRUPTCY COURT

9 FOR THE DISTRICT OF OREGON

10 In re:)
11) Case No. 19-34411-pcm13
CAROLE MARY DECOURCEY,)
12) MOTION TO VACATE ORDER
13) GRANTING RELIEF FROM STAY
Debtor.)

14 Debtor, pursuant to Bankruptcy Rule 9024, Federal Rule of
15 Civil Procedure 60(b), and applicable decisional law, moves for
16 an order vacating this Court's prior Order of February 14, 2022,
17 which granted U.S. Bank Trust National Association, et al.
18 (hereafter "Lender") relief from the automatic stay.

19 BACKGROUND AND MATERIAL FACTS

20 Debtor filed this Chapter 13 case on December 2, 2019. At
21 the time she filed the case, Debtor was in arrears on her
22 mortgage in the approximate amount of \$226,878. Being unable to
23 cure these arrears through Plan payments, a provision was
24 included in the debtor's Plan to sell or refinance her residence
no later than January 31, 2023, and pay all secured creditors in

Page 1 of 5 - MOTION TO VACATE ORDER GRANTING RELIEF FROM STAY

1 full from the sales proceeds. In addition, the Order Confirming
2 Plan added a provision to the Plan that, upon the filing with
3 the Court of a Statement of Failure to Comply, the Lender would
4 be granted relief from stay as to the debtor's residence should
5 Debtor fail to make post-petition mortgage payments after a
6 thirty-day notice to Debtor and Debtor's attorney with an
opportunity to cure.

7 On or about January 3, 2022, Debtor's attorney received a
8 notice of default dated December 30, 2021, from the Lender's
9 attorney, ZBS Law, LLP. (See attached Exhibit A.) This notice
10 stated that the debtor was in arrears \$10,221.33 in post-filing
11 mortgage payments. The notice gave the Debtor ten days from the
date of the notice to cure the default. Despite being listed on
12 the notice as having been copied on the letter, the debtor never
13 received this notice in the mail.

14 On January 4, 2022, Debtor's attorney emailed the managing
15 attorney of ZBS Law, LLP informing her that the deadline to cure
16 given in the notice of default did not follow the Plan provision
17 added by the Order Confirming Plan. Debtor's attorney requested
18 that Lender's attorney issue a new Notice. Debtor's attorney
19 also inquired of Lender's attorney in the same email whether
Lender would be willing to allow Debtor to cure the default by
20 adding the post-petition arrears into Debtor's Chapter 13 Plan.
21 Lender's attorney replied on January 4, 2022: "Yes, we should
22 be able to issue a new notice. Let me look into it. I will ask
23 about your settlement suggestion."

1 Not having received a new notice, Debtor's attorney emailed
2 Lender's attorney on January 11, 2022, asking Lender's attorney
3 to confirm that they would not be acting on the notice dated
4 December 30, 2021. Lender's attorney replied, "Correct. We have
5 sent out the corrected letter and that is the one we will be
6 acting on." A copy of the corrected notice was not provided.

7 January 12, 2022, Debtor's attorney emailed Lender's
8 attorney requesting a ledger for the account and asking for an
update regarding the proposed cure arrangement.

9 Neither the debtor nor the debtor's attorney received a new
10 notice of default in the mail from Lender's attorney's office.
11 Yet, on February 11, 2022, the firm representing Lender filed a
12 Declaration stating that a Notice of Default was mailed to
13 Debtor's attorney and to the Debtor on January 5, 2022.
14 February 14, 2022, the Court granted Lender relief from stay.

15 February 15, 2022, in an email to Lender's attorney,
16 Debtor's attorney stated that neither Debtor's attorney nor the
17 debtor had received a copy of the new notice that was attached
18 to the February 11, 2022 Declaration. As receiving mail from
19 ZBS Law, LLP had been a recurring issue, Debtor's attorney
20 requested that Lender's attorney vacate the Order Granting
21 Relief. Lender's attorney replied via email with a copy of the
22 notice that was purportedly sent on January 5, 2022 to Debtor
23 and Debtor's attorney. (See Exhibit B.) In addition, Lender's
24 attorney indicated that Lender was not open to the proposed
settlement of adding the post-petition default into Debtor's
Plan, nor allowing for an additional monthly cure payment.

Page 3 of 5 – MOTION TO VACATE ORDER GRANTING RELIEF FROM STAY

1 Lender's attorney also provided the ledger that was requested on
2 January 12, 2022. This was the first response regarding
3 Debtor's cure proposal.

4 Debtor was able to procure the funds to bring the post-
5 filing mortgage arrears current. Debtor has indicated to her
6 attorneys that, had she received the second notice of default
7 and had she known the deadline in which to cure, she would have
been able to make full payment by the deadline.

8 RELIEF SOUGHT

9 Federal Rule of Civil Procedure 60(b) allows the Court to
10 relieve a party from a final order due to (among other reasons)
11 surprise, that the order is no longer equitable, and any other
12 reason that justifies relief. Debtor requests that the Court
13 vacate the Order entered February 14, 2022, which granted relief
14 from the automatic stay to Lender. The filing of the Statement
15 of Failure to Comply by Lender's attorney was a surprise to the
16 Debtor, in that neither the Debtor nor the Debtor's attorney had
17 received the revised notice of default letter, purported to be
18 sent on January 5, 2022. The Order is no longer equitable, in
19 that the Debtor has the funds to cure the post-filing arrears.
20 (See Exhibit C.) In addition, relief is justified in that the
21 property is Debtor's residence and is necessary for her
22 effective reorganization. An equity cushion exists in the
23 property to adequately protect Lender. Finally, Debtor will be
24 listing the property for sale this month, which is ten months
before the sale/refinance deadline provided in the confirmed
Plan.

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1 WHEREFORE, Debtor requests that the Court issue an Order
2 vacating the Order granting relief to U.S. Bank Trust National
3 Association, et al. dated February 14, 2022.

4
5 Respectfully submitted this 12th day of March, 2022.

6 /s/ Megan Rickert (136404) for Todd Trierweiler
7 Todd Trierweiler, OSB 85348
8 Attorney for Debtor

RECEIVED

JAN 03 2022

69892

PC 13



December 30, 2021

(SENT VIA U.S. REGULAR MAIL)

Todd Trierweiler
4721 NE 102nd Ave
Portland, OR 97220

Re: Debtor(s) : Carole Mary Decourcey
BK Case No. : 19-34411-pcm13
Loan No. : **** 9512
Our File No. : 18003791

Dear Mr. Trierweiler:

This letter shall serve as notice of default under the terms of the Order Confirming Plan entered in your client's case on September 10, 2020, as to our client, U.S. Bank Trust National Association, as Trustee of BKPL-EG Series N Trust. The total delinquent mortgage payments are as follows:

6 regular monthly payment(s) @ \$1,673.25 (6/1/21 – 11/1/21)	\$11,712.75
Attorney Fees	\$100.00
Less funds held in suspense	(\$1,591.42)
Total arrears payments	\$10,221.33

Please remit \$10,221.33 to SN Servicing Corporation, P.O. Box 660820, Dallas, TX 75266-0820, within ten (10) days from the date of this Notice pursuant to the Stipulation for Adequate Protection. In the event your client fails to tender said funds with ten (10) days, our office will submit a declaration regarding the default along with an order for relief to the court.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact our office.

Very truly yours,
ZBS Law, LLP
/s/ Amber L. Labrecque, Esq.
Amber L. Labrecque, SBN 094593

cc: Carole Mary Decourcey, 3240 SE Lewis CT, Troutdale, OR 97060

www.zbslaw.com

5 CENTERPOINTE DR., SUITE 400, LAKE OSWEGO, OR 97035

PHONE (503) 946-6558 FAX (503) 296-2884



January 5, 2022

(SENT VIA U.S. REGULAR MAIL)

Todd Trierweiler
4721 NE 102nd Ave
Portland, OR 97220

Re: Debtor(s) : Carole Mary Decourcey
BK Case No. : 19-34411-pcm13
Loan No. : **** 9512
Our File No. : 18003791

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Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact our office.

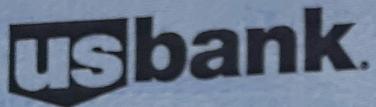
Very truly yours,
ZBS Law, LLP
/s/ Amber L. Labrecque, Esq.
Amber L. Labrecque, SBN 094593

cc: Carole Mary Decourcey, 3240 SE Lewis CT, Troutdale, OR 97060

www.zbslaw.com

5 CENTERPOINTE DR., SUITE 400, LAKE OSWEGO, OR 97035

PHONE (503) 946-6558 FAX (503) 296-2884



CASHIER'S CHECK

No. 3230515439

092-900
383

DATE: February 24, 2022

PAY TEN THOUSAND TWO HUNDRED AND TWENTY ONE DOLLARS AND 00 CENTS

\$ 10,221.00

TO THE
ORDER OF: US BANK

MEMO: CAROLE DECOURCEY

Location: 3230 Estacada

U.S. Bank, National Association
Minneapolis, MN 55480



CD

AUTHORIZED SIGNATURE

3230515439 0929003831 150080235305

MEMO:



CASHIER'S CHECK

No. 4662522790

092-900
383

DATE: March 3, 2022

PAY SEVEN THOUSAND TWO HUNDRED AND EIGHTY THREE DOLLARS AND 00 CENTS

TO THE
ORDER OF: U.S. BANK

\$ 7,283.00

Location: 4662 Cherry Park Market Center
U.S. Bank, National Association
Minneapolis, MN 55480

NON NEGOTIABLE

AUTHORIZED SIGNATURE

HARLAND CLARKE 20745 (01/13) 10139249



CASHIER'S CHECK

No. 4662522790

092-900
383

DATE: March 3, 2022

PAY SEVEN THOUSAND TWO HUNDRED AND EIGHTY THREE DOLLARS AND 00 CENTS

TO THE
ORDER OF: U.S. BANK

\$ 7,283.00

MEMO:

Location: 4662 Cherry Park Market Center
U.S. Bank, National Association
Minneapolis, MN 55480



AUTHORIZED SIGNATURE

4662522790 Case 19-34411-pcm13 Doc 72 Filed 03/12/22

Exhibit C - Page 2 of 2

Details on Back.



Security Features Included.

1 **TODD TRIERWEILER - OSB #85348**
2 Todd Trierweiler & Associates
3 Attorneys at Law
4 4721 N.E. 102nd Avenue
5 Portland, Oregon 97220
6 Phone: 503/253-7777
7 Fax: 503/253-2959

8 Attorney for Debtor

9

10 IN THE UNITED STATES BANKRUPTCY COURT

11 FOR THE DISTRICT OF OREGON

12 10 In re:)
13 11) Case No. 19-34411-pcm13
12 CAROLE MARY DECOURCEY,)
13) DECLARATION OF MEGAN RICKERT
12) IN SUPPORT OF MOTION TO
13) VACATE ORDER GRANTING RELIEF
13) FROM STAY
13 _____ Debtor.)

14 I, Megan Rickert, hereby declare as follows:

15 1.

16 I am an attorney at Todd Trierweiler & Associates and make
17 this *Declaration* in support of the *Motion to Vacate Order*
18 *Granting Relief from Stay*.

19 2.

20 I am familiar with the procedure for processing mail at our
21 office. All mail delivered comes to the desk of our
22 receptionist or, if our receptionist is out, to our office
23 manager. Each piece of mail is stamped "Received" once removed
24 from the envelope and then is scanned into our computer system.

**Page 1 of 3 - DECLARATION OF MEGAN RICKERT IN SUPPORT OF MOTION
TO VACATE ORDER GRANTING RELIEF FROM STAY**

Todd Trierweiler & Associates - Attorneys at Law
4721 N.E. 102nd Avenue
Portland, Oregon 97220

Phone 503/253-7777 Fax 503/253-2959

Case 19-34411-pcm13 Doc 72 Filed 03/12/22

Each scanned file is then linked to the appropriate client's file and routed to the handling attorney for review.

3.

January 3, 2022, a notice of default pertaining to this case dated December 30, 2021 and from ZBS Law, LLP was received at our office and routed to me for review. After review, I contacted the managing attorney at ZBS Law, LLP, Amber Labrecque, regarding an improper cure deadline given in the notice. Ms. Labrecque agreed to send a revised notice to our office and to the debtor with the proper cure deadline.

4

January 11, 2022, having not received a new notice, I emailed Ms. Labrecque to confirm that ZBS Law, LLP would not be acting on the previous notice dated December 30, 2021. Ms. Labrecque indicated that a new notice had been sent out.

5.

January 12, 2022, I emailed Ms. Labrecque requesting a ledger for the debtor's mortgage account to review the accuracy of the claimed delinquency. I also inquired about cure arrangements.

6.

Our office never received a revised notice of default.

111

///

Page 2 of 3 - DECLARATION OF MEGAN RICKERT IN SUPPORT OF MOTION
TO VACATE ORDER GRANTING RELIEF FROM STAY

Todd Trierweiler & Associates – Attorneys at Law
4721 N.E. 102nd Avenue
Portland, Oregon 97220

7.

The first time I saw the revised notice of default, dated January 5, 2022, was when I received the electronic service of the Declaration of Angela K. Viale re: Non-cure of Breach of Order Granting Adequate Protection via ECF on February 14, 2022.

8

I did not receive any correspondence from Ms. Labrecque nor her office regarding my request for the mortgage ledger, nor my inquiry regarding cure arrangements until after the Order Granting Relief from Stay was entered in this case.

9.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted this 12th day of March, 2022.

/s/ Megan Rickert
Attorney

1 **TODD TRIERWEILER - OSB #85348**

2 Todd Trierweiler & Associates
3 Attorneys at Law
4 4721 N.E. 102nd Avenue
5 Portland, Oregon 97220
6 Phone: 503/253-7777
7 Fax: 503/253-2959

8 Attorney for Debtor

9

10

11 IN THE UNITED STATES BANKRUPTCY COURT

12

13 FOR THE DISTRICT OF OREGON

14

15 In re:)
16) Case No. 19-34411-pcm13
17 **CAROLE MARY DEOURCEY**,)
18) DECLARATION OF
19) CAROLE MARY DEOURCEY
20) IN SUPPORT OF MOTION TO
21) VACATE ORDER GRANTING RELIEF
22) FROM STAY
23)
24 Debtor.)

15

16 I, Carole Mary Decourcey, hereby declare as follows:

17

1. .

18

19 I am the Debtor herein, and make this Declaration in
20 support of the Motion to Vacate Order Granting Relief from Stay.

21

2. .

22

23 I was informed by my attorney that ZBS Law, LLP claimed to
24 have mailed two notices of default to me at my home address of
25 3240 SE Lewis CT, Troutdale, OR 97060: one on December 30,
26 2021 and one on January 5, 2022.

27 ///

**Page 1 of 2 - DECLARATION OF CAROLE MARY DEOURCEY IN SUPPORT OF
MOTION TO VACATE ORDER GRANTING RELIEF FROM STAY**

Todd Trierweiler & Associates - Attorneys at Law
4721 N.E. 102nd Avenue
Portland, Oregon 97220
Phone: 503/253-7777 - Fax: 503/253-2959

3.

As of the date of signing this Declaration, I have not received either of those notices in the mail, except for as an attachment to my service copy of the Declaration of Angela K. Viale re: Non-Cure of Breach of Order Granting Adequate Protection.

4

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted this 11th day of March, 2022.

DocuSigned by:

Carole Mary Decourcy
550072E1F354476

Page 2 of 2 - DECLARATION OF CAROLE MARY DECOURCEY IN SUPPORT OF
MOTION TO VACATE ORDER GRANTING RELIEF FROM STAY

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5 Attorney for Debtor

6
7

8 IN THE UNITED STATES BANKRUPTCY COURT

9 FOR THE DISTRICT OF OREGON

10 In re:)
11) Case No. 19-34411-pcm13
CAROLE MARY DEOURCEY,)
12) CERTIFICATE OF SERVICE
13)
13 Debtor.)

14 CERTIFICATE OF SERVICE

15 I hereby certify that on March 12, 2022, I mailed true and
16 correct copies of the Motion to Vacate Order Granting Relief
17 from Stay, Declaration of Megan Rickert in Support of Motion to
18 Vacate Order Granting Relief from Stay , and Declaration of
19 Carole Decourcey Motion to Vacate Order Granting Relief from
20 Stay for Carole Mary Decourcey, Case Number 19-34411-pcm13, to
the following:

21 Carole M. Decourcey
22 3240 SE Lewis CT
Troutdale, OR 97060

23 ///

24 ///

Page 1 of 2 - CERTIFICATE OF SERVICE

Todd Trierweiler & Associates - Attorneys at Law
4721 N.E. 102nd Avenue
Portland, Oregon 97220

Phone 503/253-7777 Fax 503/253-2959
Case 19-34411-pcm13 Doc 72 Filed 03/12/22

1 U.S. Bank Trust National Assoc., et al.
2 Amber L. Labrecque
3 5 Centerpointe Dr., Suite 400
3 Lake Oswego, OR 97035

4 The following parties were served electronically:

5 Wayne Godare, Chapter 13 Trustee
6 Portland, OR

7 US Trustee
7 Portland, OR

8 Amber L. Labrecque

9 Jeffrey Alan Myers

10 DATED: March 12, 2022

11 /s/ Megan Rickert
11 Megan Rickert, Attorney